

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

1/23/2020 12:01 pm

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LOUIS J. SCAVONE, individually and on behalf  
of all others similarly situated,

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

Plaintiff,

**ORDER**

19-CV-1514 (SJF)(AYS)

- against-

FRONTLINE ASSET STRATEGIES, LLC,

Defendant.

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FEUERSTEIN, District Judge:

Plaintiff commenced this action alleging that defendant violated the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.* Before the Court is a Report and Recommendation (“the Report”) of the Honorable Anne Y. Shields, United States Magistrate, dated January 8, 2020, *see* Docket Entry (“DE”) [17], (1) recommending that defendant’s motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure be granted in part and denied in part; (2) recommending that the amended complaint be dismissed; and (3) advising *inter alia*, (a) that “[a]ny written objections to th[e] Report . . . must be filed with the Clerk of the Court within fourteen (14) days of filing” and (b) that a “[f]ailure to file objections within fourteen (14) days will preclude further review of this report and recommendation either by the District Court or Court of Appeals.” Report at 12 (citing 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 6(a), 72(b); *Thomas v. Arn*, 474 U.S. 140, 145, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985); and *Cidor v. Onondaga Cnty.*, 517 F.3d 601, 604 (2d Cir. 2008)).

A copy of the Report was served upon counsel for all parties via ECF on January 8, 2020. Despite such service, no objections have been filed, nor has any party sought an extension of time to do so. For the reasons set forth below, Magistrate Judge Shields’s Report is adopted in its entirety.

## I. DISCUSSION

### A. Standard of Review

Any party may serve and file written objections to a report and recommendation of a magistrate judge within fourteen (14) days after being served with a copy thereof. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2). Any portion of such a report and recommendation to which a timely objection has been made is reviewed *de novo*. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(3). However, the Court is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. *See Thomas*, 474 U.S. at 150. Indeed, “[w]here parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)).

Nonetheless, the waiver rule is “nonjurisdictional” and, thus, the Court may excuse a violation thereof “in the interests of justice.” *King v. City of N.Y., Dep’t of Corr.*, 419 F. App’x 25, 27 (2d Cir. 2011) (summary order) (quoting *Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993)); *see also DeLeon v. Strack*, 234 F.3d 84, 86 (2d Cir. 2000). “Such discretion is exercised based on, among other factors, whether the defaulted argument has substantial merit or, put otherwise, whether the magistrate judge committed plain error in ruling against the defaulting party.” *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); *accord King*, 419 F. App’x at 27.

To accept the magistrate’s report and recommendation absent a timely objection, the court need only be satisfied that there is no clear error on the face of the record. *See FED. R. CIV.*

P. 72(b); *Baptichon v. Nevada State Bank*, 304 F. Supp. 2d 451, 453 (E.D.N.Y. 2004), *aff'd*, 125 F. App'x 374 (2d Cir. 2005). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).

## **B. Review of the Report**

No party has filed objections to the Report within the time prescribed in 28 U.S.C. §636(b)(1)(C), nor has any party sought an extension of the deadline. As the parties were provided with adequate notice of the Report and an express warning of the consequences of a failure to timely file objections thereto, their failure to interpose timely objections to the Report operates as a waiver of further judicial review. *See Caidor*, 517 F.3d at 602-03; *Mario*, 313 F.3d at 766. Thus, this Court is not obligated to conduct a *de novo* review of the findings and conclusions in the Report, but rather "need only satisfy itself that there is no clear error on the face of the record to accept a magistrate judge's report and recommendation." *Safety-Kleen Sys., Inc. v. Silogram Lubricants Corp.*, No. 12-CV-4849, 2013 WL 6795963, at \*1 (E.D.N.Y. Dec. 23, 2013). After a careful review of the Report, the Court finds no plain error in either the reasoning or the conclusions reached therein, and accordingly, adopts it in its entirety.

## **II. CONCLUSION**

The Report is adopted in its entirety. Defendant's motion to dismiss, DE [14] is denied to the extent it seeks dismissal of the claims as time-barred, and granted for failure to state a claim

under the FDCPA. The Clerk of the Court is directed to close the case.

**SO ORDERED.**

/s/ *Sandra J. Feuerstein*

Sandra J. Feuerstein  
United States District Judge

Dated: January 23, 2020  
Central Islip, New York